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6 UNITED STATES BANKRUPTCY COURT  
7 WESTERN DISTRICT OF WASHINGTON

8 In Re:

Bankruptcy No. 13-15193-TWD

9 MARK S. COLON &  
10 VERONICA I. COLON,

Debtors.

11  
12 Adversary Proceeding No.

ROBERT TENCZAR & JENNIFER  
TENCZAR, husband & wife;

13 Plaintiffs,

COMPLAINT TO DETERMINE  
DISCHARGEABILITY

14 vs.

15 MARK S. COLON & VERONICA I.  
16 COLON,

17 Defendants.  
18

19 COME NOW the plaintiffs by and through their below-signed attorneys of record, A.  
20 Stephen Anderson, PS, and A. Stephen Anderson, and for cause of action hereby allege as  
21 follows:

22 **I. Parties and Jurisdiction**

23 1.1 Plaintiffs Robert Tenczar and Jennifer Tenczar (hereinafter referred to  
24 collectively as "Tenczars"), husband and wife, were at all times material hereto residents  
25 of King County, Washington. They are all of the members and all of the managers of  
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1 Plaintiff Everest Homes, LLC ("Everest Homes"), a Washington limited liability company.  
2 Everest Homes does business in King County, Washington.

3 1.2 Defendants Mark S. Colon and Veronica I. Colon (hereinafter "Colon"),  
4 husband and wife, are believed to be residents of King County, Washington. Defendant  
5 Mark S. Colon is believed to be the sole officer and director of Defendant Pacific Builders  
6 Development, Inc., (hereinafter "Pacific Builders") a Washington corporation. Pacific  
7 Builders does business in King County, Washington. The conduct of Defendant Mark S.  
8 Colon herein complained of was on his own behalf and that of his marital community.

## 9 **II. FACTS PERTINENT TO THE CLAIMS**

10 2.1 In June 2008, Defendant Mark S. Colon and a colleague Joshua Hosford  
11 executed a purchase and sale agreement for a parcel of commercial property ("the  
12 Property") in Manson, Washington with the expressed intention of developing the  
13 Property into condominiums. Subsequently Defendant Mark S. Colon and his colleague  
14 assigned their interest in the purchase and sale agreement to Manson Vue LLC, a  
15 Washington limited liability company they and a third colleague, Jared Spane, formed for  
16 the purpose of purchasing, owning and developing the Property ("the Project.")

17 2.2 In late 2008, Joshua Hosford approached Tenczars to solicit a loan to fund  
18 the Project. In further discussions, Joshua Hosford solicited Tenczars' participation as  
19 investors rather than as lenders. Based on representations made by defendant Mark S.  
20 Colon and Joshua Hosford, many of which proved to be false, Tenczars initially invested  
21 \$100,000. In 2010, Joshua Hosford approached Tenczars to solicit an additional  
22 investment of \$75,000 in the Project. In 2011, Joshua Hosford approached Tenczars to  
23 solicit an additional investment of \$40,000 in the Project. Each time, to persuade the  
24

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1 Tenczars to invest, Defendant Mark S. Colon made a number of material factual  
2 representations that later proved to be false. These material misrepresentations were  
3 intended to induce Tenczars to invest in the Project initially and to make subsequent  
4 investments, and Tenczars relied on the misrepresentations made by Defendant Colon in  
5 deciding to invest. The material misrepresentations included, without limitation, that Lyle  
6 and Pat Hosford parents of Joshua Hosford had invested a certain sum of money in the  
7 Project, but any actual investment appears to have been considerably less than what they  
8 claimed. In particular, Joshua Hosford represented that his parents, Defendants Lyle and  
9 Pat Hosford had invested \$85,000 in the Project and that sum was used as a benchmark  
10 to assess Everest Homes' (Tenczars' wholly owned entity) percentage of interest in  
11 Manson Vue, and Defendant Mark Colon confirmed Hosford's representations. In  
12 enticing Tenczars' investments, Defendant Mark S. Colon falsely represented that he had  
13 accomplished considerably more work in the Project than had actually been  
14 accomplished, and otherwise inflated the progress of the Project. In enticing Tenczars'  
15 investments, Defendant Colon falsely represented the time and expense that would be  
16 required to complete the Project, stating untruthfully as to each proposed investment that  
17 it would constitute all of the funds necessary to complete the planning and permitting for  
18 the Project, including all architectural and engineering work. In all instances, Defendant  
19 Colon knew or reasonably should have known that the representations he made to  
20 Tenczars were false, his misrepresentations were made to induce Tenczars to invest in  
21 the Project, and he intended that they rely on the truthfulness of his misrepresentations.  
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24 2.3 Defendant Mark S. Colon further falsely represented that the Property seller  
25 has made certain price and term concessions in writing when in fact no price and term  
26 COMPLAINT TO DETERMINE  
27 DISCHARGEABILITY - 3

1 concessions existed. In all instances, Defendant Mark S. Colon knew or reasonably  
2 should have known that the representations he made to Tenczars were false, his  
3 misrepresentations were made to induce Tenczars to invest in the Project, and he  
4 intended that they rely on the truthfulness of his misrepresentations.

5       2.4 In reliance on the information provided by Defendant Mark S. Colon,  
6 Tenczars invested \$100,000. In return, Tenczars' entity, Everest Homes LLC became a  
7 member of Manson Vue LLC. In further reliance on the information provided by  
8 Defendant Mark S. Colon, Tenczars made additional investments of \$75,000 and agreed  
9 to invest an additional \$40,000. After learning of some of the numerous false  
10 representations made by Defendant Mark S. Colon, Tenczars funded only about \$22,000  
11 of the final \$40,000 solicited.

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13       2.5 Defendant Mark S. Colon participated in the material misrepresentation of  
14 the extent of Defendants Lyle and Pat Hosford's investment at least by remaining silent  
15 as Joshua Hosford misrepresented their investment and by signing or initialing various  
16 documents attesting that they had invested \$85,000 in the Project when he knew or  
17 reasonably should have known that they had not.

18       2.6 Eventually it became apparent to Tenczars that Defendant Mark S. Colon  
19 diverted to his use some of the funds invested by Tenczars that were intended to  
20 complete the Project. Tenczars have repeatedly requested from Manson Vue, and  
21 Defendant Mark S. Colon documentation confirming the receipts and disbursements of  
22 Manson Vue and of Defendant Mark S. Colon on Manson Vue's behalf, but their requests  
23 have been ignored.  
24

25       2.7 Defendant Mark S. Colon's role in the Project was to serve as the  
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1 developer, through his entity, Defendant Pacific Builders, which was also a member of  
2 Manson Vue. However, there were long periods, several months at a time, since  
3 Tenczars' initial investment during which Defendant Mark S. Colon and Pacific Builders  
4 did nothing to advance the Project. Defendant Mark S. Colon withheld this critical  
5 information from Tenczars when he and Joshua Hosford solicited additional investment  
6 from Tenczars, each time giving incomplete or false information as to why additional  
7 funds were needed. Meanwhile, the purchase and sale agreement had to be extended  
8 repeatedly, at considerable expense each time.

9           2.8     Because of the long delays attributable to Defendant Mark Colon and  
10 Joshua Hosford and diversion of Project resources to their personal use, the Project  
11 required additional funding.

12           2.9     Tenczars now believe that at least some of their investment was diverted to  
13 personal use of Defendant Mark S. Colon, but their requests for books and records of  
14 Manson Vue and the Project have been ignored.

15           2.10    Prior to filing this action, Tenczars attempted to mediate this dispute in the  
16 spirit, if not the letter, of the Limited Liability Company Agreement of Manson Vue LLC  
17 ("the Company Agreement"), to which all parties are signers, but none of the named  
18 parties or other interested parties would participate.  
19

### 20                           **III. FIRST CAUSE OF ACTION – FRAUD**

21           3.1     Plaintiffs restate paragraphs 1.1 through 2.10, above.

22           3.2     By their conduct herein alleged, Defendant Mark S. Colon committed fraud  
23 in the inducement in securing the investment made by plaintiffs Tenczar.  
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### 25                           **IV. SECOND CAUSE OF ACTION – BREACH OF CONTRACT**

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1           4.1     Plaintiffs restate paragraphs 1.1 through 3.2, above.

2           4.2     By their conduct herein alleged, the named defendants have breached the  
3     Company Agreement, and Defendant Mark S. Colon breached numerous oral  
4     agreements with Tenczars.

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6                   **V. THIRD CAUSE OF ACTION – SECURITIES VIOLATIONS**

7           5.1     Plaintiffs restate paragraphs 1.1 through 4.2, above.

8           5.2     By their conduct herein alleged, Defendant Mark S. Colon violated the  
9     Securities Act of Washington State (RCW 21.20).

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11                   **VI. FOURTH CAUSE OF ACTION – ATTORNEY FEES AND COSTS**

12           6.1     Plaintiffs restate paragraphs 1.1 through 5.2, above.

13           6.2     Under the Securities Act of Washington State (RCW 21.20) and other  
14     applicable law, Defendant Mark S. Colon is liable for actual costs and attorney fees  
15     incurred by plaintiffs Tenczar and Everest Homes.

16           **WHEREFORE**, Plaintiffs Tenczar and Everest Homes, LLC pray for judgment against  
17     the defendants as follows:

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19           A.     That the debts of Debtors Mark S. Colon and Veronica I. Colon are non-  
20     dischargeable under 11 USC 523 (2) & (4) and otherwise as may be proved at trial;

21           B.     Judgment against defendants Colon jointly and severally for the return of  
22     Tenczars' investment in Manson Vue, LLC;

23           B.     Judgment against defendants Colon jointly and severally for direct damages in  
24     an amount to be proved at the time of trial;

25           C.     Judgment against defendants Colon jointly and severally for consequential

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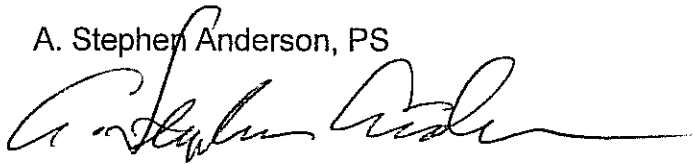
1 damages in an amount to be proved at the time of trial;

2 D. Judgment against defendants Colon jointly and severally for costs and  
3 disbursements herein including reasonable attorney's fees; and,

4 E. For such other and further relief as this court deems just and equitable.

5 DATED this 3<sup>rd</sup> day of September, 2013.

6 A. Stephen Anderson, PS

7 

8 A. Stephen Anderson, WSBA# 8369

9 Attorney for Plaintiffs

10 146 N. Canal St.

11 Suite 350

12 Seattle, WA 98103

13 206.306.9464

14 FAX: 1.888.315.5938

15 astephenanderson@gmail.com

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